

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems And Their)
Impact Upon The Existing Television Service)

MM Docket No. 87-268

COMMENTS OF MOUNTAIN BROADCASTING CORPORATION

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To: The Commission

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Mountain Broadcasting Corporation ("Mountain"), by its attorneys, submits these comments in response to the Commission's Sixth Further Notice of Proposed Rule Making ("6th NPRM") in the above-captioned proceeding.¹ Mountain is the licensee of WMBC-TV ("WMBC"), channel 63, Newton, New Jersey, an independent, minority-owned broadcast station.

In taking the final steps toward making digital broadcast television ("DTV") a reality, the Commission's 6th NPRM proposes policies for assigning individual DTV frequencies to broadcasters. In so doing, the Commission desires comment on the principles and assumptions underlying its proposals for DTV allotments and assignments, such as the method for creating DTV service areas and a strategy for minimizing interference to existing NTSC stations during phase-in of DTV service. Indeed, it expressly stated, "We request

¹FCC 96-317, released August 14, 1996.

comment on all aspects of the principles and assumptions underlying the attached draft DTV table."² The Commission has identified three goals for this stage of the proceeding:

1. A DTV allotment plan that fully accommodates all eligible existing broadcasters;
2. A DTV allotment plan that replicates broadcasters' existing NTSC service areas; and
3. Minimization of unavoidable interference (without preference to either NTSC or DTV service) through sound spectrum management.³

Mountain urges the Commission, in considering any DTV assignment/allotment proposal, not to adopt any scheme that will disproportionately burden any one station in a market and its viewers during the transition period. As set out herein, both the Commission's originally-proposed allotments and those which Mountain understands are now being proposed by the Broadcasters' Caucus ("Caucus"), would threaten the very survival of WMBC and other similarly-situated stations. Further, the Commission must adopt an absolute floor on service loss for any station under any new allotment plan.

WMBC is an independent, UHF television station operating on channel 63. After a nearly eight-year comparative proceeding before the Commission,⁴ the station commenced operations on April 26, 1993 and began 24-hour programming on July 13, 1993. Since that time, the station has obtained a steadily growing audience exposure, both off-air and through

²6th NPRM at ¶ 8.

³6th NPRM at ¶¶ 1-8.

⁴Bogner-Newton Corp., 2 FCC Rcd 4792 (ALJ 1987); aff'd, 3 FCC Rcd 553 (Rev. Bd. 1988); aff'd and modified, 4 FCC Rcd 2561 (1989); recon. denied, 5 FCC Rcd 2755 (1990); appeal denied, Nos. 89-1271, 90-1270 (D.C. Circuit, Nov. 19, 1990).

cable carriage, although in many cases cable carriage has been obtained only through protracted and costly litigation to enforce the Commission's must-carry rules.⁵ In several instances, WMBC has had to purchase signal reception equipment to be used by local cable operators as part of the process of obtaining carriage.

Independent station WMBC is licensed to the community of Newton, New Jersey -- located in a state for which the FCC has historically had special concern with respect to the availability of local television service.⁶ Mountain, the station's licensee, is owned by a group of Asian-Americans, and the station's principal owners are actively involved in the station management. WMBC offers local-interest and family-oriented programming strategically designed to offer adults, teenagers and children less violent and more morally uplifting programming than typically available on other area network and independent stations. The station also offers significant foreign-language programming for the international population within WMBC's viewing area. The station provides nine hours of Korean language programming, fifteen hours of Japanese language programming, seven hours of Chinese language programming, three and one-half hours of Filipino language

⁵See, e.g., Complaint Against Cablevision Systems Corporation, 11 FCC Rcd 2362 (1996); Mountain Broadcasting Corporation, 10 FCC Rcd 7132 (1995); Complaint of Mountain Broadcasting, 9 FCC Rcd 5787 (1994).

⁶In the mid-1970s, the FCC spent several years studying television service in New Jersey, finding a need to augment locally-oriented broadcasting service for New Jersey. First Report and Order and Further Notice of Proposed Rule Making, 58 FCC 2d 790 (1976); Second Report and Order, 59 FCC 2d 1386 (1976); Third Report and Order, 62 FCC 2d 604 (1976). Even now, New Jersey has only one VHF station licensed to a community within its borders, see Multi-State Communications, Inc. v. FCC, 728 F.2d 1519 (D.C. Cir. 1984).

programming, seventeen hours of Italian programming, one-half hour of Ukrainian programming and six hours of Asian Indian programming in Hindi, Gujarati, and English.

The Commission's current DTV allotment proposal would reduce WMBC's viewing audience by 9.4 percent as a result of interference created by the transition to a DTV broadcasting format.⁷ Mountain understands that under the Caucus' DTV plan, WMBC would suffer a 27.9 percent loss in its present viewing audience.⁸ The adoption of any assignment/allotment proposal which has such a substantial impact on one station would be unfair, unnecessary and inconsistent with the Commission's established policies to encourage the viability of UHF and minority-owned broadcast stations.

In particular, the considerable size of WMBC's viewer loss under the Caucus assignment/allotment plan would obviously be extreme. Such significant viewer disenfranchisement would not only be facially inequitable but also unjust in comparison to other stations' loss of coverage and viewership. Under the Caucus proposal, more than one out of every four WMBC viewers would be unable to receive the station's signal through free, over-the-air broadcasting. Though some degree of audience loss may be unavoidable, WMBC's loss would simply be unreasonable.

This conclusion is additionally supported by the fact that under the Caucus plan, substantial viewer disenfranchisement would be experienced by a station which is both UHF and minority-owned. The loss in viewer audience magnifies and exacerbates the poor signal

⁷6th NPRM, Appendix B, B-27.

⁸Mountain has participated in continuing negotiations with the Caucus, seeking to preserve its current service area, without success.

reception, financial instability and advertising revenue/cash flow problems that are often associated with such stations. Indeed, the intrinsically inferior propagation abilities characteristic of UHF stations has prompted the Commission to take measures to preserve the viability of such stations. In 1978, at the direction of Congress, the Commission instituted a UHF Comparability Task Force to determine the effectiveness of possible further improvements to UHF television service.⁹ Thereafter, the FCC consistently recognized the need for UHF/VHF distinctions and UHF incentives became an integral part of the FCC regulatory framework.¹⁰ The Commission has similarly taken efforts to encourage the minority ownership of broadcast facilities. Also in 1978, the Commission issued a policy statement on minority broadcast ownership¹¹ and has since adopted initiatives to increase minority participation in the management and ownership of broadcast stations.¹² Adoption of any proposal that would burden WMBC so disproportionately would clearly disserve and contradict these established objectives.

In its 6th NPRM, the Commission proposed and endorsed a "service replication" approach under which existing NTSC frequencies are matched with potential DTV

⁹See Improvements to UHF Television Reception, 90 FCC 2d 1211 (1982).

¹⁰Amendment of § 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 74 (1985) (FCC adopted policy through which national audience reach (for purposes of compliance with the national multiple ownership rules) would be calculated by attributing UHF stations with only 50 percent of the households in their market).

¹¹See Statement of Policy on Minority Ownership of Broadcasting Facilities, 69 FCC 2d 979 (1978).

¹²See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, FCC 94-323 (released January 12, 1995).

frequencies to create television channel assignments.¹³ In support of this decision, the Commission stated that "[r]eplication would generally maintain the service areas of existing NTSC stations, thereby preserving viewers' access to off-the-air service and the ability of stations to reach the audiences that they now serve."¹⁴ If the preservation of a stations' ability to reach its audience throughout the DTV transition period is, in fact, a sincere goal of DTV implementation, then in addition to rejecting the Caucus assignment/allotment proposal, the Commission should establish an absolute floor on the maximum allowable percentage of audience loss during the transition period. This percentage should be an operative factor in the Commission's evaluation of any DTV assignment/allotment design. If under any proposal an individual station would experience a loss of viewers in excess of the percentage floor, it must not be adopted as proposed.

Furthermore, if alternative proposals are technologically or logistically impossible, stations whose viewer disenfranchisement exceeds the established maximum should be accorded subsequent advantage and preference in the implementation of DTV service. In the 6th NPRM, the Commission offered several suggested means of accommodating signal interference and individual station predilections such as (1) limiting the use of full authorized power by stations adjacent to impacted stations, (2) granting priority status in the licensee's channel number selection, (3) requiring that the signals of impacted stations be carried by their respective local cable operators and (4) affording flexibility in the location of impacted

¹³6th NPRM at ¶ 12.

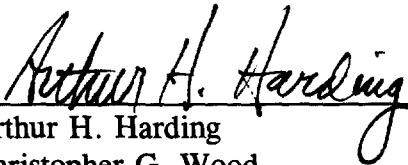
¹⁴6th NPRM at ¶ 13 (footnote omitted).

stations DTV transmitters.¹⁵ These alternatives should be converted into requirements and incorporated into the ultimate DTV implementation plan as a means of predictably mitigating substantial audience loss damage created by DTV assignments/allotments.

For these reasons, Mountain strongly urges the Commission to reject any assignment/allotment proposal that would have a disproportionate impact on a UHF station such as WMBC. Mountain further recommends that the Commission adopt a maximum limit on the percentage of disenfranchised viewers and to include this limit in its evaluation of DTV assignment/allotment proposals.

Respectfully submitted,

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¹⁵6th NPRM, ¶¶ 33, 40-41, 46 and 56.